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TAGS: KJUS PINS PHUM PTER IZ

SUBJECT: NEW GOI AMNESTY LAW VOTED DOWN BY MINISTERS

REF: A. BAGHDAD 2396

¶B. BAGHDAD 1921

¶C. BAGHDAD 1553

Classified By: PMin Robert Ford for reasons 1.4 (b)

¶11. (C) Summary: Prime Minister Maliki proposed a new amnesty law during the November 4 Cabinet meeting, but ministers voted against it during the November 18 Cabinet meeting. According to Minister of Human Rights Wijdan Salim, although the PM was supporting the law, key ministers spoke against a second amnesty and agreed it would not be wise to have two amnesties in one year. Minister Wijdan and the PM's legal adviser Dr. Fadl said the new law was for a second amnesty and was written by Higher Judicial Council Chief Justice Medhat. This draft law was more restrictive than the previous amnesty law and favored Shi'a detainees. This draft law was not the same as the amendments to the original amnesty law that were passed by the Cabinet in May and that reached the Parliament in October; those amendments are considered to be a dead issue. It appears that by failing to approve this second amnesty law, the cabinet has blunted one tool the Prime Minister was using to reach out to the Sadrists. End Summary.

THE PROPOSED SECOND AMNESTY LAW

¶12. (C) Minister of Human Rights Wijdan Salim discussed the origins of the new Amnesty Law draft with PolOff on November 5 and 16. She said several weeks ago the Prime Minister (PM) sent a letter to Higher Judicial Council (HJC) Chief Justice Medhat al-Mahmoud asking him to draft a new amnesty law. According to the letter, the PM said there were technical problems with the first amnesty law and asked the HJC to draft a new law. The law was on the Council of Ministers' (COM, the Cabinet) agenda on November 4, 11, and 16, but there has been no discussion or vote yet. The agenda specified that the PM was introducing the law.

IN ADDITION TO ORIGINAL AMNESTY

¶13. (C) If this law for a second amnesty had passed, it would have resulted in the amnesty and eventual release of additional convicts and suspects; amnesty orders issued under the first Amnesty Law, which was passed in February 2008, would remain in effect as well. The PM's legal adviser Dr. Fadl confirmed that the second amnesty would not replace the existing Amnesty Law. (Note: HJC has almost completed adjudications of amnesty release requests from the first law, but there is still a delay in implementing the amnesty release orders by the Ministries of Justice and Interior. There has been a history of implementation problems with the first amnesty (ref A, B).

¶14. (C) Minister Wijdan wrote a letter to the PM last week

opposing the new amnesty. She believes that the first law was not implemented well, and implementation problems should be corrected before there is a second amnesty. She also thinks it is a bad sign for the country to offer two amnesties in one year because it will indicate that Iraq does not uphold the rule of law. A few Sunni Council of Representative (COR - the parliament) members voiced skepticism about the law, fearing that it would not benefit the majority Sunni detainees in GOI custody.

¶5. (C) There have been grumblings about the original amnesty law since it was passed in February. The PM and Acting Minister of Justice Safa al-Safi have openly opposed the version of the law passed by the COR because it allows detainees convicted of terrorism crimes to receive amnesty, which was seen to benefit Sunni detainees. Al-Safi has tried over the past months to slow MOJ releases and even halted them at one point.

WHO NEW AMNESTY WOULD BENEFIT

¶6. (C) Acting Minister al-Safi told Minister Wijdan on November 16 that the PM was pushing this law to grant releases to Shi'a detainees in order to garner support from the Shi'a political parties. Al-Safi said he would support this law because he needs Shi'a political support. The Minister of Migration told poloff on November 18 that the new amnesty was strongly backed by Jaysh al-Mehdi supporters and added that Minister of State for National Security Shirwan Waeli had been urging the PM to issue a second amnesty.

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Minister Wijdan thinks this amnesty would primarily benefit Shi'a detainees charged with criminal cases who were arrested during the GOI military operations that began in March.

LEGAL DIFFERENCES WITH FIRST AMNESTY LAW

¶7. (SBU) The second amnesty draft was similar to the first amnesty law, but with some significant changes related to terrorism crimes. The first amnesty law excluded detainees charged with terrorism crimes that "resulted in death or permanent disability." Under the new draft, however, detainees charged with or sentenced for all terrorism-related crimes would generally be barred from benefiting from any amnesty. In general, this draft would benefit fewer prisoners and detainees than the first Amnesty Law and Sunni detainees in particular would be less likely to benefit. Although we do not know how many Sunnis in GOI custody are charged with terrorism crimes, we can use our visibility on the Rusafa Rule of Law Center to estimate. At Rusafa, the vast majority of detainees are charged with terrorism-related crimes, and around between 80-88 percent of the detainees are Sunni.

¶8. (SBU) Additionally, in another provision in the first amnesty law, detainees sentenced to death under the Iraqi Penal Code were excluded from benefiting from amnesty. This provision does not bar from amnesty the thousands of (mainly Sunni) detainees who were charged with terrorism-related crimes and sentenced to death under the 2005 Anti-Terrorism Law, which is not part of the Iraqi Penal Code. This provision was amended by the COR in opposition to the Cabinet's draft because COR members wanted to make the law less restrictive. A vast number of Sunni detainees are charged under the 2005 law and thus positively benefitted from the first Amnesty Law. (Note: The 2005 Anti-Terrorism Law covers a wide-range of crimes including relatively minor terrorism-related crimes like membership in an organization or financing. It provides a sentence of death to all terrorism-related crimes. End Note.) Because this new amnesty draft law exempted all individuals charged with or

convicted of crimes of terrorism, as described above, it would apply to a much narrower group of convicts and accused than did the first amnesty. The net effect, in practical terms, would be to reduce the benefit of this amnesty to Sunnis, many of whom have been charged with terrorism-related crimes as described above.

MINISTERS VOTE AGAINST SECOND AMNESTY

¶19. (C) Minister Wijdan told PolOff on November 20 that the Cabinet unanimously voted against the second Amnesty Law during the Cabinet meeting on November 18. The PM opened discussion on the law by urging that Iraq needs a second amnesty. Wijdan said that she led the discussion against the law and echoed her recent letter to the PM. She said a study had to be made first on the original amnesty law to determine previous mistakes, and she maintained that it was a bad sign for a country to sponsor two amnesties in one year. Not only would the international community doubt Iraq's commitment to the rule of law, but a second amnesty would also cause bad morale among Iraqi police.

¶10. (C) According to Wijdan, the Minister of Defense then spoke out against the law and was followed by each minister in the room, including the Ministers of Interior, Industry, and Education. Wijdan said, "even Safa al-Safi spoke against it," but he then proposed a specifically targeted amnesty rather than a general amnesty for all detainees.

PREVIOUS AMNESTY LAW AMENDMENTS

¶11. (C) In May, a draft set of amendments to the existing Amnesty law was proposed by the COM (ref C). These amendments would have excluded all terrorism charges from amnesty, but they did not reach the COR until October and would not retroactively affect previous amnesty orders. Because most individuals eligible for the existing amnesty have already received amnesty orders, this restriction in the amendments would have little effect if it were now passed. According to Sunni COR members, the COR recently "rejected" these amendments. The HJC had told the COR members that the amendments would be ineffective because they were not and could not be retroactive. According to Chief Justice Medhat, the COR asked the HJC to provide an advisory opinion on the

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amendments. An HJC representative went to the COR and listened to the objections, which were primarily from the Tawafuq party. No votes were taken at this session.

¶12. (C) In June, Medhat doubted the effectiveness of the May amendments, commenting that at least 85 percent of the amnesty claims have already been processed by the HJC. He said this was relevant because the statute cannot have retroactive effect. The Constitution prohibits retroactivity in criminal laws unless they benefit the defendant. Medhat added that if Parliament explicitly stated that the statute would be treated retroactively, it would be a question for the Supreme Court, and his vote would be to hold such a retroactivity provision unconstitutional. (Note: There are nine judges on the Supreme Court, which is headed by Medhat. End Note.)

COMMENT

¶13. (C) It is a positive development that the Cabinet voted against this second amnesty law because it would have been seen as a GOI attempt to support Shi'a interests and disregard Sunni concerns about Sunni detainees languishing in

detention facilities. During this tense political period, any further movement with this new amnesty could further separated the Shi'a and Sunni leaderships and have a negative impact on reconciliation efforts. We will therefore keep monitoring any movement of the draft law.

¶14. (C) Regarding the amendments from May, if they were to pass with retroactive authority and were not declared unconstitutional, they would have a significant impact on the numbers of amnesty cases approved and numbers of releases. Most individuals suspected of insurgency-related activities are charged with terrorism crimes, and because we have visibility on the charges of coalition-held detainees under GOI investigation or trial, we know many of these individuals are charged with more minor terrorism-related crimes, like weapons possession. Since many Sunnis are being held for insurgent activity and charged with terrorism-related crimes, denying them amnesty after the law passed could further hinder reconciliation efforts.

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